625

SUPREME COURT OF THE UNITED STATES.

No. 71.

JOHN LLOYD, PLAINTIFF IN ERROR,

VS.

GEORGE S. HOUGH.

IN ERROR TO THE CIRCUIT COURT U. S. FOR ALEXANDRIA, D. C.

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S. D. Langtree, Print.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

To George S. Hough, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, being the present seat of the national government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States' Circuit Court of the District of Columbia, for the county of Alexandria, wherein John Lloyd is plaintiff and George S. Hough is defendant, to show cause, if any there be, why the judgment rendered against the said John Lloyd, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this eleventh day of November, 1841.

W. CRANCH.

DISTRICT OF COLUMBIA,
Alexandria County, to wit:

Daniel Miner appeared in open court and made oath, that on the eleventh day of November, 1841, he delivered a true copy of the within citation to George S. Hough, and informed him of the contents.

Given under my hand this 12th day of Nov'r., 1841.

RICH'D. H. LEE, *Dep. Cl'k.*

Writ of Error.

UNITED STATES OF AMERICA,
District of Columbia, to wit:

The President of the United States of America, to the Judges of the United States' Circuit Court of the District of Columbia, greeting: [L. S.]

Because in the record and proceedings, and also the rendering of the judgment of a plea which is in the said court for the county of Alexandria, before you or some of you, between John Lloyd, plaintiff, and George S. Hough, in a plea of trespass on the case, manifest error hath happened, to the great damage of the said John Lloyd, as by his complaint appears; and we being willing that

error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, being the present seat of the national government, on the second Monday in January next, that the record and proceedings aforesaid, being seen and inspected, the said Supreme Court may cause further to be done therein, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the United States, this eleventh day of November, eighteen hundred and forty-one.

CASSIUS F. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit :*

Pleas before the honorable the Judges of the United States Circuit Court of the District of Columbia, for the County of Alexandria, the 10th day of May, 1841.

JOHN LLOYD, Plaintiff,
agt.
GEORGE S. HOUGH, Deft. } In case.

Title.

Be it remembered, that heretofore, to wit, at the rules held in the Clerk's office of the said Court, for the month of March, 1840, came the plaintiff, by Thomas Semmes, Esq., his attorney, and filed there a certain bill against the said deft. ; which bill is in the words and figures following :

Declaration.

ALEXANDRIA COUNTY, *sct :*

John Lloyd complains of George S. Hough, in custody, &c., of a plea of trespass on the case : for that, whereas, the said plaintiff, before and at the time of making the agreement and undertaking of the said defendant, hereinafter-mentioned, was lawfully possessed of a certain tenement, situate in the town of Alexandria, to wit, at the county aforesaid ; and thereupon heretofore, to wit, on the first day of January, 1824, at Alexandria, to wit, at the county aforesaid, by a certain agreement then and there made, between the said plaintiff, of the one part, and the said defendant, of the

other part; it was agreed by and between the said plaintiff and defendant, that the said plaintiff should rent and deliver the possession of the tenement aforesaid to the said defendant, to be held by the said defendant from the said first day of January, 1824,—he yielding and paying the said plaintiff the yearly rent of $175, at the end of each and every year thereafter, as long as the said defendant might occupy the same; by virtue of which agreement the said defendant entered on the demised premises, and was possessed thereof from thenceforth until the first day of January, 1839, when a large sum of money, to wit, the sum of $2,625 of the rent aforesaid, for the fourteen years then elapsed, became and was due and payable from the said defendant to the said plaintiff, and is still in arrear and unpaid to the said plaintiff; and being so liable and indebted, the said defendant, on the said 1st day of January, 1839, undertook and assumed to pay to the plaintiff the said sum of money, to wit, the sum of $2,625, whenever he should be thereunto afterwards requested.

And whereas, the said defendant afterwards, to wit, on the day and year last aforesaid, at Alexandria, to wit, at the county aforesaid, was indebted to the said plaintiff in the further sum of $2,625 for the use and occupation of a certain dwelling house, situate at Alexandria, to wit, at the county aforesaid, of the said plaintiff, by the said defendant, and at his special request, and which dwelling house, by the sufferance and permission of the said plaintiff, the said defendant for a long time then elapsed had, held, used, occupied, possessed, and enjoyed; and being so indebted to the said plaintiff, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Alexandria, viz., at the county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when he, the said defendant, should be thereunto afterwards requested. Nevertheless, the said defendant, although often thereto requested, has not paid to the plaintiff the said sum of money, or any part thereof; but the same to pay hath hitherto altogether refused, and still refuses, to the plaintiff's damage $3000 dollars; and therefore he brings suit, &c.

THOMAS SEMMES, *P. Q.*

Account.

MR. GEORGE S. HOUGH,

To JOHN LLOYD, *Dr.*

One year's rent of two story brick house on Washington street, occupied by him, and due on the 1st day of January, 1825, - - - - -	$175 00
1 year's rent, due Jan'y 1st, 1826, - -	175 00
1 do do Jan'y 1st, 1827, - - -	175 00

1	year's rent	due	Jan'y 1st, 1828,	- - -	$175 00
1	do	do	Jan'y 1st, 1829,	- - -	175 00
1	do	do	Jan'y 1st, 1830,	- - -	175 00
1	do	do	Jan'y 1st, 1831,	- - -	175 00
1	do	do	Jan'y 1st, 1832,	- - -	175 00
1	do	do	Jan'y 1st, 1833,	- - -	175 00
1	do	do	Jan'y 1st, 1834,	- - -	175 00
1	do	do	Jan'y 1st, 1835,	- - -	175 00
1	do	do	Jan'y 1st, 1836,	- - -	175 00
1	do	do	Jan'y 1st, 1837,	- - -	175 00
1	do	do	Jan'y 1st, 1838,	- - -	175 00
1	do	do	Jan'y 1st, 1839,	- - -	175 00
					$2625 00

Interest claimed from and after the expiration of each and every year. (Errors excepted.)

JOHN LLOYD.

Com. Order.

And the defendant being arrested, and not appearing on the motion of the plaintiff by his attorney, it is ordered that judgment be entered for the plaintiff against the defendant, for what damages the plaintiff hath sustained by occasion of the defendant's non-performance of the promise and assumption in the declaration mentioned, unless the said defendant should appear and plead to issue at the next rules.

Com. Order confirmed, and Writ of Inquiry.

At another day, to wit, at the rules held in the Clerk's office of the said Court, for the month of April, in the same year, came the plaintiff aforesaid by his attorney, and the def't still failing to appear on the motion of the plaintiff, by his attorney, it is ordered that the last order made against him in this cause be confirmed, and that the plaintiff's damages be ascertained by a jury at the next term.

Jury Sworn.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 5th day of October, 1840, came the plaintiff by his attorney, and thereupon came a jury, to wit: Alexander Waugh, John Wood, Reuben Zimmerman, David Price, John Summers, James W. Sears, Charles Pascoe, Robert Hall, Mathias Snyder, Samuel Isaacs, George O. Dixion, and Charles McKnight; who, being sworn well and truly to enquire what damages the plaintiff hath sustained by reason of his action against the defendant, returned the following verdict:

628.

Verdict.

"We of the jury assess the plaintiff's damages at the sum of two thousand six hundred and twenty-five dollars, being the amount due him for rent as claimed in his declaration; and at the further sum of eleven hundred and two dollars and fifty cents, being the interest on each year's rent as claimed by the plaintiff from the time each year's rent became due to January 1st, 1839, the whole sum due the plaintiff on January 1st, 1839, being three thousand seven hundred and twenty-seven 50-100 dollars.

Motion for New Trial.

And the def't moved the Court to set aside the verdict, and to grant a new trial.

New Trial granted.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 14th day of October, 1840, came the plaintiff by his attorney, and the def't, by Chs. Neale, Esqr., his attorney, and the court having heard the motion for a new trial, the verdict of the jury is set aside, and a new trial is granted on payment of costs, and on condition that the def't shall not plead the act of limitations.

Non assumpsit granted.

And the def't saith that he did not assume upon himself in manner and form as the plaintiff against him hath complained, and of this he putteth himself upon the country, and the plaintiff likewise; and leave is granted the defendant to file offsetts within 60 days.

Jury Sworn.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 6 day of May, 1841, came the parties aforesaid by their attorneys, and thereupon came a jury, to wit: William Veitch, Presley Jacobs, Jesse Skidmore, Samuel Bartle, John L. Pascoe, John Wood, Robert Hall, William C. Reynolds, Thomas Whittington, Samuel Lindsay, William H. Shirley, and Francis Triplett; who, being sworn well and truly to try the issue joined between plaintiff and defendant, and having heard the testimony of witnesses, by consent of parties and with the assent of the court, are continued until to-morrow.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 7th day of May, 1841, came the

parties aforesaid by their attorneys, and the jury sworn to try the issue in this case appeared in court, and having heard the argument of counsel, by consent of parties and with the assent of the court, are continued until to-morrow.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 8th day of May, 1841, came the parties aforesaid by their attorneys, and the jury sworn to try the issue in this cause appeared in court, and retired to consider of their verdict.

Verdict for Def't and Judgment.

And now here, at this day, to wit, at a court continued and held for the district and county aforesaid, the said 10th day of May, 1841, came the parties aforesaid by their attorneys, and the jury sworn to try the issue in this case appeared in court, and returned the following verdict: "We of the jury find for the defendant." Therefore, it is considered by the court, that the plaintiff take nothing by his bill, but for his false clamor be in mercy, &c.; and that the said defendant go thereof without day and recover against the plaintiff his costs by him about his defence in this behalf expended. The plaintiff and defendant tendered bills of exceptions, which are signed, sealed, and enrolled.

Motion new Trial.

Afterwards, to wit, at a court continued and held for the district and county aforesaid, the 7th day of June, 1841, came the parties aforesaid by their attorneys, and the plaintiff moved the court to set aside the verdict of the jury and the judgment of the court, to grant a new trial, on the ground of a misdirection by the court to the jury,—which motion is continued until the next court.

Motion Overruled.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 10th day November, 1841, came the parties aforesaid by their attorneys, and on hearing the motion for a new trial, the court refused to grant the same.

Plaintiff's costs $———
Deft's " $———

Bills of Exceptions.

1st Bill of Exceptions.

The defendant offered evidence to prove, by competent and credible witnesses, that there was at all times, while the defendant in

this cause occupied the premises for the use and occupation of which, as stated in the 2d count, this action is brought, sufficient property belonging to the defendant on the premises aforesaid, liable to distress, out of which the rent aforesaid could have been made from time to time, as it fell due and became payable, had the plaintiff in this cause distrained or sued therefor; and that the plaintiff has resided in the town of Alexandria for the last 45 years.

Whereupon, the defendant, by his counsel, prayed the court to instruct the jury, that if they shall believe from the evidence that there always were effects on the premises aforesaid, while occupied by the defendant, liable to distress, sufficient to have paid and satisfied the rents which were not paid, as they from time to time fell due and became payable, then that the plaintiff, failing or neglecting to distrain or sue for the rents so due and remaining unpaid, is not entitled on the 2d count in this action to interest on the rent arrear, whatever it may be, beyond the date of the writ sued out in this cause; but the jury may allow interest on the amount of rent found due [should they find for the plaintiff] from the date of the writ aforesaid till paid, and no more.

But the court refused the instruction prayed, to which refusal the defendant excepts, and prays that this his bill of exceptions may be signed, sealed, and enrolled, and which is accordingly done, this 7th of May, 1841.

W. CRANCH, [L. S.]
JAMES S. MORSELL, [L. S.]

Second Bill of Exceptions.

2d Bill of Exceptions.

And the defendant, by cross-examination of the plaintiff's witness, (Isaac Robbins aforesaid,) showed and proved by said witness, that in the spring of 1820 the defendant entered, held, used, and occupied the premises in question, under a parol demise from said Isaac Robbins, the trustee of one John Swayne, an insolvent debtor, as tenant from year to year, to the said Isaac Robbins, at the annual rent of $175, payable quarterly; that the defendant continued to occupy the premises aforesaid, until the spring of 1824, yielding and paying the said Isaac Robbins, trustee as aforesaid, the aforesaid rent as it fell due and became payable; that the said Isaac Robbins did collect those rents for the defendant, from the year 1820 until the spring of 1824, as the trustee of John Swayne aforesaid, and insolvent debtor as aforesaid, and paid said rents as he collected them to Anthony C. Cazenove, and to the plaintiff in this cause, but without the knowledge of the defendant aforesaid, so far as he knows; but that since the spring of 1824, said Isaac Robbins, trustee as aforesaid, has not collected any further

rents from the defendant; the defendant refusing to pay, and assigning as a reason that Humphrey Peeke, then the collector of the port of Alexandria, had forbidden him to do so; that the defendant continued to occupy the said premises, and who is still an occupant thereof, and that the plaintiff in this cause never did, to his knowledge, take actual possession of the premises; said Isaac Robbins having lived in the town of Alexandria for the last thirty-seven years, and still resides here.

The defendant also read in evidence a deed from Jonathan Scholdfield and wife, to A. C. Cazenove, bearing date the 13th June, 1814, and the same duly recorded on the land records of Alexandria county, Dist. Columbia, as the law directs; which deed conveys, with the adjoining house to the south, the one occupied by the defendant in this cause, and which deed is in these words and figures—(see page 13.)

And thereupon, the defendant, by his counsel, prayed the court to instruct the jury, that if they shall believe from the evidence that the defendant in this cause originally entered, used, and occupied the premises aforesaid, by permission or parol demise from Isaac Robbins, the trustee aforesaid of John Swayne, some time in the year 1820, and to whom the defendant as tenant from year to year paid rent, until the spring of 1824, after which time the said Isaac Robbins ceased to collect the rent, for the reason hereinbefore stated, although the defendant continued to occupy the premises aforesaid from that time until the trial of this cause, and still occupies them; and for the rent which accrued since the spring of 1824, the present action is brought; and that the defendant did not hold, use, and occupy the premises aforesaid, either under a written*d* or parol*e* demise from the plaintiff to the defendant, prior or subsequently to his holding under Isaac Robbins, or prior to the instituting of this suit, but that the defendant held, used, and occupied the premises aforesaid, exclusively under the original parol*e* demise from Isaac Robbins, trustee as aforesaid, until the defendant received a written notice from the plaintiff in this cause, dated the 29th May, 1839, which notice is in these words and figures—(see page 17;) and the same admitted by the plaintiff's counsel to have been written by the plaintiff, and delivered to the defendant; but that since the said notice, the defendant has paid the accruing rent to the plaintiff as the same became due and payable; and that the defendant had no notice of the plaintiff's title to the tenement or premises aforesaid, until the 29th May, 1839, other than from the deed from Robert I. Taylor to the plaintiff, being recorded, as it has this day been shown in evidence, (see page 17,) then that the jury must find for the defendant.

Which instruction the court gave as prayed, to which the plaintiff by his counsel excepts, and this his bill of exceptions is signed, sealed, and ordered to be enrolled, this 7th of May, 1841.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]

Third Bill of Exceptions.

3*d Bill of Exceptions.*

The plaintiff in this cause having offered in evidence a deed of bargain and sale, dated March 10th, 1817, from Robert I. Taylor, trustee, under a deed of trust from Jonathan Scholfield and wife, to said Taylor, dated June 26th, 1814, (see page 20,) to him the said plaintiff; said deed, among other property, conveying to the said plaintiff, his heirs and assigns, to his and their only proper use, the premises to recover damages for the use and occupation of which this action was brought—(see page 21.)

And the said plaintiff having further proved by Isaac Robbins, a competent and credible witness, that from the year 1820 to the year 1824, the defendant used, enjoyed, and occupied the premises in the declaration mentioned, under a verbal renting from said Robbins, claiming as trustee of one John Swayne, under the insolvent law, and that said renting by said Robbins was without the knowledge or consent of the plaintiff, (no title of any description having been shown by the defendant in the said John Swayne, or in the said Isaac Robbins claiming through him as trustee under the insolvent law;) and that he the said Robbins collected of the defendant the rent of the said premises, from the said year 1820 inclusive, to January 1st, 1824, in quarterly collections, at the rate of $175 per annum, claiming as lessor aforesaid, and trustee of said Swayne; and that he the said Robbins paid over a portion of the money so collected from the defendant as rent of said premises, to Anthony C. Cazenove, the owner of an annuity or ground rent charged on said premises in his favor, by a deed from Jon. Scholfield and wife to said Cazenove, dated June 13th, 1814, (and which deed had before been offered in evidence by the defendant and admitted,) and paid over another portion of the money so received from defendant to the plaintiff, who was the legal owner of the fee simple under the deed from Taylor, of March 10th, 1817, subject to the annuity granted to Cazenove as aforesaid; said witness not knowing whether defendant knew of the disposition so made of the rent collected of him; and further, that he the said Robbins, claiming as trustee of Swayne as aforesaid, hath not claimed or demanded any rent for the said premises from the defendant since April 15th, 1824; said Robbins having been informed by defendant that he had been forbidden by Humphrey Peake, collector of the customs of the United States, to pay over any rent for the premises to any one other than the United States, (said defendant not having shown any title or color of title in the said Humphrey Peake, or in the said United States,) and not having shown that defendant ever at any time has paid any rent for the said premises to the said Humphrey Peake, or the said United States.

Therefore, the plaintiff prayed the court to instruct the jury, that if they believe the evidence aforesaid, then that the plaintiff has made out such a case as will entitle him to recover on the second count, for the use and occupation of the premises in the declaration mentioned, for such time as the plaintiff shall prove the defendant has used, occupied, and enjoyed the premises, after the 15th day of April, 1824, by permission of said plaintiff, and at such rate of annual rent therefor as the jury may from the evidence determine on.

Which instruction the majority of the court refused to give as prayed, being of opinion that from the evidence so stated as aforesaid, it was not competent for the jury to infer that such occupation by the defendant was by permission of the plaintiff; to which refusal the plaintiff excepts, and this his bill of exception is signed, sealed, and ordered to be enrolled, this 7th of May, 1841.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Fourth Bill of Exceptions.

4th Bill of Exceptions.

The plaintiff having offered to prove, by George Drinker, a competent and credible witness, that the claim of the plaintiff to the premises, for the rent of which this suit is brought, was a subject of general notoriety in the neighborhood and town of Alexandria, about the year 1820, and since; which being objected to by the defendant's counsel, thereupon the plaintiff's counsel argued that they had a right to ask the witness the question objected to, it being a matter introductory to another question intended to be asked of the witness, the purpose of which second question was, to bring home to the defendant in this cause a knowledge of the fact that the plaintiff claimed the premises occupied and used by defendant, during the time he so used and occupied them, to wit, from the year 1820, and since.

But the court refused to admit the said evidence, to which refusal of the court the plaintiff excepts, and this their bill of exceptions is signed, sealed, and ordered to be enrolled, this 8th of May, 1841.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

5th Bill of Exceptions.

5th Bill of Exceptions.

In the further trial of the issue in this cause, the plaintiff moved the court to instruct the jury as follows: If the jury believe from the evidence stated in the former bills of exceptions in this cause, that there was a deed from Jonathan Scholfield and wife, (said

Scholfield being admitted, by defendant, to have at that time been seised of the legal fee simple estate in the premises,) to Robert I. Taylor, (see page 20)—which deed conveyed the legal estate in fee in the premises, for the use and occupation of which this suit is brought, to the said Robert I. Taylor—and if the jury further believe that the said Robert I. Taylor, by a deed subsequent thereto, and set out in plaintiff's 2d bill of exceptions, conveyed the said premises to the plaintiff and his heirs and assigns, to his and their only proper use, (and notwithstanding the jury shall believe that there was a deed prior to the deed to said Taylor, from said Scholfield and wife, to Anthony C. Cazenove, conveying a certain annuity or ground rent charged upon and issuing out of said premises, with a power of re-entry in case of default in paying said annuity,) then by the legal operation of the said deed from the said Taylor to the plaintiff, there was such a possession transferred to the use thereby limited and conveyed to the said plaintiff, his heirs and assigns, as dispenses with proof on the part of the plaintiff, that he had actual entry on, and possession of the premises; and that said deed gave to the plaintiff such a legal title to, and possession of the premises as could not be devested by a leasing of said premises by Isaac Robbins, a stranger to the defendant, so as to deprive the plaintiff of his remedy against the defendant, tenant of the premises, occupying and using them, tho' originally leased to him by said Robbins, without the plaintiff's consent.

Which instruction the court refused to give, to which refusal the plaintiff excepts, and this his bill of exceptions is signed, sealed and ordered to be enrolled, this 8th day of May, 1841.

W. CRANCH, [L. S.]
B. THRUSTON. [L. S.]

Deed from Scholfield and wife to Cazenove.

Deed from Jonathan Scholfield and wife to A. C. Cazenove, referred to in second bill of exceptions, (page 9).

This Indenture, made this thirteenth day of June, in the year one thousand eight hundred and fourteen, between Jonathan Scholfield and Eleanor, his wife, of the one part, of the town of Alexandria, in the District of Columbia, and Anthony Charles Cazenove, of the same town, of the other part: Witnesseth, that the said Jonathan Scholfield and Eleanor, his wife, in consideration of the sum of two thousand five hundred dollars to the said Jonathan in hand paid, by the said Anthony Charles Cazenove, of which the receipt is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain and sell unto the said Anthony Charles Cazenove, one certain annuity or yearly rent of two hundred and fifty dollars, to be paid to the said Anthony Charles Cazenove, his heirs and assigns, by half yearly instalments of one hundred and twenty-five dollars each, forever; that is to say, the sum of one hundred and twenty-five dollars on the thirteenth day

of December, and the same sum on the thirteenth day of June, in each year; to be issuing out of and charged upon two brick tenements and lots of ground on the east side of Washington street, between Prince and Duke streets, in the town of Alexandria aforesaid, which said two tenements and lots of ground are bounded as follows: beginning on Washington street, a point equi-distant from Prince and Duke streets, then south on Washington street to the south wall of the second tenement now occupied by the said Jonathan Scholfield; thence east, parallel to Duke street to an alley eleven feet wide; thence north, on the alley, and parallel to Washington street; to a point equi-distant from Prince and Duke streets; thence west, to the beginning—the front on Washington street, being supposed to be about forty-four feet, and the depth about one hundred and twelve feet five inches, be the same, however, more or less. To have and to hold the said anniuity or rent, to the said Anthony Charles Cazenove, his heirs and assigns, to his and their only proper use forever; and the said Jonathan Scholfield, for himself, his heirs, executors, administrators and assigns, does hereby covenant with the said Anthony Charles Cazenove, his heirs and assigns, that he the said Jonathan Scholfield, his heirs and assigns, will well and truly satisfy and pay the said annuity or rent, as the same shall become due; and thatif the said rent should not be punctually paid on the days it shall become payable, then, that it shall be lawful for the said Anthony Charles Cazenove, his heirs and assigns, from time *time* to time, on each and every default, to enter on the premises charged with the payment of the said rent, and levy by distress and sale of the goods and chattles there found, the rent so in arrear, and the costs of such distress and sale, and that if the said rent or any part thereof shall at any time hereafter remain in arrear and unpaid for the space of thirty days after any day of payment as aforesaid, and no distress sufficient to satisfy the rent in arrear and the costs of distress and sale can be found on the premises charged; then it shall be lawful for the said Anthony Charles Cazenove, his heirs and assigns, to enter on the premises before described, and from thence to expel and remove the said Jonathan Scholfield, his heirs and assigns, and forever thereafter to occupy and enjoy the said premises, as the absolute estate of him, the said Anthony Charles Cazenove, his heirs and assigns; and the said Jonathan Scholfield for himself, his heirs, executors and administrators, does hereby further covenant with the said Anthony Charles Cazenove, his heirs and assigns, that he the said Jonathan Scholfield is now in his own right seised of a good, sure and indefeasible estate of inheritance in fee simple in the premises aforesaid, free from all incumbrances, except an annuity of fifty dollars, payable to the assignee of William Thornton Alexander, in fee; and an annuity of two hundred dollars for life, payable to Mrs. Mary Piercy, and charged on an half acre lot of which the premises before described

are a part; which said annuity of two hundred dollars shall be levied on the residue of the said half acre, and shall never be demanded from the premises hereby charged on the tenants thereof, or any part thereof; and further, that he the said Jonathan Scholfield, his heirs, executors, administrators and assigns, will forever hereafter keep the buildings and tenements hereby charged, or which may at any time hereafter be placed on the said lots on which the said tenements stand, fully insured in an insurance office incorporated, against destruction by fire, and that policies of insurance shall from time to time, at the request of the said Anthony Charles Cazenove, his heirs and assigns, be assigned to such trustee as he or they shall name; and in case of loss and destruction by fire, the money received on such policies of insurance shall be applied to repair or replace the buildings insured or destroyed, unless the said Jonathan Scholfield, or his heirs or assigns, shall think proper to pay to the said Anthony Charles Cazenove, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and a ratable dividend of the rent for the time which shall have elapsed from the last half year's day to such day of payment; on which payments being made, the said policies and the money received thereon, shall be delivered and paid to the said Jonathan Scholfield, his heirs or assigns, and the rent hereby granted shall cease; and further, that the said Jonathan Scholfield and his heirs will execute and deliver all further assurances and conveyances which may be necessary more fully to carry into effect the intention of the parties hereto, and will forever warrant and defend the annuity or rent hereby granted to the said Anthony Charles Cazenove, his heirs and assigns, against the claims and demands of all persons whatsoever. Provided always, and it is hereby agreed between the parties hereto, that if the said Jonathan Scholfield, his heirs or assigns, shall, at any time after the date hereof, pay to the said Anthony Charles Cazenove, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and a ratable dividend of rent for the time which shall have elapsed, from the last half year's day to the day of such payment; then this indenture shall become void, and the annuity or rent hereby granted shall cease and determine; and the said Anthony Charles Cazenove, his heirs or assigns, will execute and deliver all deeds of conveyance or release, which may be necessary to extinguish the same.

In witness whereof, the parties to this indenture have hereto set their hands and seals, the day and year first before written.

JONA. SCHOLFIELD, [L. S.]
ELEANOR SCHOLFIELD, [L. S.]
ANT. CHS. CAZENOVE. [L. S.]

Sealed and delivered in the presence of
JOHN WHITELEGG, ROBERT H. MILLER,
ELIAS B. SMITH, ROBERT GRAY.
HOL. SCOTT,

At a United States' Circuit Court of the District of Columbia, continued and held for the county of Alexandria, the first day of December, eighteen hundred and fourteen, this deed from Jonathan Scholfield and Eleanor, his wife, to Anthony Charles Cazenove, was acknowledged by the said Jonathan Scholfield and Anthony Charles Cazenove to be their act and deed, which, together with a commission and return for the privy examination of Eleanor Scholfield, wife of the said Jonathan Scholfield, are ordered to be recorded.

Teste, G. DENEALE, *C. C.*

DISTRICT OF COLUMBIA,
County of Alexandria, sc.

The United States of America, to Abraham Faw, Richard Libby, and Jacob Hoffman, gentlemen, justices of the said county of Alexandria, greeting: [L. S.]

Whereas Jonathan Scholfield, and Eleanor, his wife, by their certain indenture of grant, bearing date the thirteenth day of June, eighteen hundred and fourteen, have sold and conveyed unto Anthony Charles Cazenove the fee simple estate of an annuity or rent of two hundred and fifty dollars, payable semi-annually, on the thirteenth day of December and thirteenth day of June, forever, charged on two brick tenements and lots of ground on the east side of Washington street, with the appurtenances, situate, lying, and being in the said county of Alexandria; and whereas the said Eleanor cannot conveniently travel to our United States' Circuit Court of the District of Columbia, for the county of Alexandria, to make acknowledgement of the said conveyance; therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Eleanor shall be willing to make before you of the conveyance aforesaid, contained in the said indenture, which is hereunto annexed; and we do therefore desire you or any two or more of you, personally to go to the said Eleanor and receive her acknowledgement of the same, and examine her privily and apart from the said Jonathan Scholfield, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats; and whether she be willing the said indenture, together with this commission, shall be recorded in our said court; and when you have received her acknowledgment, and examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under your hands and seals, sending then there the said indenture and this writ.

Witness the honorable William Cranch, chief judge of our said court, this thirteenth day of June, eighteen hundred and fourteen.

G. DENEALE, *C. C.*

To the honorable Judges of the Circuit Court of the District of Columbia, for the county of Alexandria.

The subscribers, justices of the peace of the said county, do respectfully certify, that under the authority of this commission we examined Eleanor, the wife of Jonathan Scholfield therein named, privily and apart from her said husband, respecting her execution of the deed annexed, and within described, which we shewed and explained to her; on which examination she acknowledged that she had willingly signed and sealed the same, and consented to its being duly recorded.

Certified under our hands and seals, this thirteenth day of June, eighteen hundred and fourteen.

A. FAW, [L. S.]
RICH'D. LIBBY, [L. S.]

Notice from Lloyd to Hough.

Notice referred to in 2nd Bill of Exceptions—(page 10.)

Alexandria, May 29th, 1839.

Sir:

Anthony Charles Cazenove, Esq'r., or his assignee, claims an annuity or ground rent of two hundred and fifty dollars per annum, payable half yearly, on the tenement now in your occupancy, and that occupied by Mr. John Douglass, or Mr. Harrison D. Wright.

I now give you notice, that I consider the contract by which the said claim was created to be illegal, and I hereby require you to withhold from the said A. C. Cazenove, and all persons claiming under him, the payment of any money on account of the said ground rent or annuity; and in case distress should be made upon you for the same, or any part thereof, I promise to indemnify and save you harmless, if you will resist the payment, by a writ of repleven.

You will please understand, if you make any payment after receiving this notice, it will be made at your own risk.

Very respectfully yours,
JOHN LLOYD.

To Mr. GEORGE S. HOUGH,
Alexandria, D. C.

Deed from R. I. Taylor to John Lloyd.

Deed from Robert I. Taylor to John Lloyd, referred to in 2d and 3d Bills of Exceptions.

This Indenture, made this tenth day of March, in the year one thousand eight hundred and seventeen, between Robert I. Taylor,

of the town of Alexandria, in the District of Columbia, of the one part, and John Lloyd, of the same town, of the other part: whereas Jonathan Scholfield, and Eleanor, his wife, by indenture of the 26th day of June, in the year 1814, for the purpose of indemnifying Andrew Scholfield against the responsibility by him proposed to be incurred, by endorsing the notes of the said Jonathan, and of the firm of Scholfield and Scott, for their sole accommodation—conveyed to the said Robert I. Taylor a lot of ground in the said town of Alexandria, on the north side of Duke street, and on the east side of Washington; beginning at the intersection of said streets, thence north on Washington street, to a point equi-distant from Prince and Duke streets; then eastwardly parallel to the said streets to a point equi-distant from Washington and St. Asaph streets; then southwardly parallel to Washington and St. Asaph streets to Duke street; then on Duke street to the beginning; on which said lot were erected five three story brick tenements, commencing on the north side of Duke street, and extending northwardly from thence along Washington street to an alley three feet wide; and three two story brick tenements, commencing on Washington street and extending from the north line of the said three feet alley to the north line of the entire lot: all of which tenements were bounded on the east by an alley eleven feet wide, laid off along the whole length of the eastern boundary of the said lot; and the said entire lot so conveyed to the said Robert I. Taylor, and the several portions thereof, were subject to the following incumbrances, that is to say: a rent of fifty dollars per annum, reserved on a demise made of the entire lot by William F. Alexander to Henry Piercy in fee; an annuity for the life of Mary Piercy, of two hundred dollars per annum, reserved on a demise by her made of the entire lot to the said Jonathan Scholfield; an annuity in fee of five hundred dollars per annum, granted by the said Jonathan Scholfield to William S. Moore—chargeable on the four southern three story brick tenements; an annuity of two hundred and fifty dollars per annum in fee, granted by the said Jonathan to Anthony Charles Cazenove, charged on the two northern two story brick tenements; an annuity of two hundred and fifty dollars, granted by the said Jonathan to William Patton, charged on the most northwardly of the five brick three story tenements, and on the south two story tenement, in fee; which said conveyance was made to the said Robert I. Taylor and his heirs, in trust for the following purposes, that is to say: to permit the said Jonathan Scholfield, his heirs and assigns, to retain possession and to receive the rents and profits without account until a sale should become necessary under the terms of the said deed; and if at any time thereafter any bond, bill or note theretofore endorsed, or to be thereafter endorsed by the said Andrew for the accommodation of the said Jonathan, or of Scholfield and Scott, should remain unpaid for the space of three days after it became due, then that

the said Robert, or his heirs, should from time to time, at the request of the said Andrew, or of his representatives, on every such event, proceed to sell the premises conveyed, or so much as might be necessary, at public auction, on such terms as the said Andrew might direct, after giving three weeks' notice by advertisement of the time and place of sale, and after discharging all reasonable expenses of sale, should apply the money thence to arise to the indemnification of the said Andrew in the manner specified in the said deed, and should convey the premises sold to the purchaser thereof.

And whereas, after the said conveyance to the said Robert I. Taylor, that is to say, on the 29th day of October, 1816, the said John Lloyd purchased from the said Jonathan Scholfield the five three story brick tenements, and received a conveyance for the same; by the terms of which sale and conveyance, the said five tenements were to remain exclusively charged with the said annuity of fifty dollars, with the said annuity of five hundred dollars granted to William L. Moore, and with one half of the annuity of two hundred and fifty dollars granted to William Patton—the other half of which was made chargeable on the south two story brick house, and the second or middle two story brick house was exclusively charged with the annuity of two hundred dollars to the said Mary Piercy, and the said annuity of the said Anthony Charles Cazenove was left chargeable on the two northern two story brick houses—to secure more effectually which arrangement the necessary covenants and grants of rent were entered into and made between the said Jonathan and the said John, as by the said deed of the 29th day of October will more fully appear.

And whereas sundry notes of the said Jonathan, endorsed by the said Andrew for his accommodation, under the said deed of trust to the said Robert I. Taylor, to an amount exceeding thirteen thousand dollars, became due and remained for more than three days, and were finally taken up by the said Andrew; and the said Andrew at the request of the said John retaining his lien and recourse to the said five three story brick tenements for the sum of ten thousand five hundred dollars, part of the sum of eleven thousand dollars particularly charged thereon by the said deed of the 29th of October, has desired the said Robert I. Taylor to proceed to raise the sum of twenty-six hundred and eight dollars 54-100 (being the balance due him after deducting payments made, and the said ten thousand five hundred dollars, for money by him advanced under endorsements made by him for the said Jonathan as aforesaid) together with the expenses of sale; by a sale for cash of the said three two story brick tenements, and the said Robert I. Taylor having given more than three weeks' notice of the time and place of sale by advertisement in the Alexandria Gazette, did, in pursuance of the said notice, proceed to offer the said three two story brick tenements for sale at public auction on the premises for cash, at twelve o'clock on the

8th day of the present month, at which sale it was particularly declared by all the parties concerned, that the arrangement of the said liens and incumbrances, as contained in the said deed of the 29th of October, 1816, was in all things confirmed, and the said three two story tenements sold subject to the said arrangement; and the said John Lloyd having at the said public sale become the purchaser of the north tenement at the price of sixteen hundred and twenty-five dollars, of the middle tenement at the price of eight hundred and twenty-five dollars, and of the south tenement at the price of eighteen hundred and twenty-five dollars, being the highest sums bid for the same.

Now this Indenture witnesses, that the said Robert I. Taylor, in discharge of the trust in him reposed, and in consideration of the said sums of money to him paid by the said John Lloyd, of which he doth hereby acknowledge the receipt, has granted, bargained, and sold, aliened and confirmed, and does by these presents grant, bargain and sell, alien and confirm unto the said John Lloyd, the said three two story brick tenements and lots of ground before mentioned, bounded on the north by the north line of the said entire lot, on the south by the said three feet alley, on the west by Washington street, and on the east by the said eleven feet alley, together with the full and free use of the said two alleys in common with others entitled thereto, subject however to the payment of the said annuities or rents as arranged by the said deed between Jonathan Scholfield and the said John Lloyd, of the 29th day of October, 1816: To have and to hold the said tenements and lots of ground on which they are erected, with all privileges and appurtenances to the said John Lloyd, his heirs and assigns, forever, to his and their only proper use.

In witness whereof, the said Robert I. Taylor has hereto set his hand and seal the day and year first before written.

R. I. TAYLOR, [L. S.]

Sealed and delivered in presence of
ROB. W. HARRISON,
JOSEPH EACHES,
C. FLETCHER.

At a United States Circuit Court of the District of Columbia, continued and held for the County of Alexandria, the twenty-eighth day of April, eighteen hundred and seventeen, Robert I. Taylor acknowledged this deed to John Lloyd to be his act and deed, which is ordered to be recorded.

Teste, G. DENEALE, *C. C.*

Jonathan Scholfield and wife to Robert I. Taylor.

Deed from Jonathan Scholfield and wife to Robert I. Taylor, referred to in 3d bill of exceptions, see page 11.

This Indenture, made this twenty-sixth day of June in the year

of our Lord one thousand eight hundred and fourteen, between Jonathan Scholfield and Eleanor, his wife, of the first part, Robert I. Taylor, of the second part, and Andrew Scholfield, of the third part, all of the town of Alexandria in the District of Columbia: Whereas the said Andrew has agreed to assist the said Jonathan in his individual capacity, and also the firm of Scholfield and Scott in the prosecution of their business, by endorsing the bonds, bills and notes which he or they may from time to time issue, or by issuing his own paper for his or their accommodation to such extent and in such manner as he may in his discretion think fit; and whereas the said Andrew has heretofore endorsed the paper of said Jonathan, and Scholfield and Scott, and issued his own paper for his and their accommodation, and the said Jonathan and Eleanor, his wife, being desirous of indemnifying the said Andrew, and in consideration of the sum of one dollar paid to the said Jonathan by the said Robert, the receipt whereof is hereby acknowledged, have granted, bargained and sold, aliened and confirmed, and do by these presents grant, bargain and sell, alien and confirm unto the said Robert a lot of ground on the north side of Duke street and on the east side of Washington street, in the said town of Alexandria, bounded as follows: Beginning at the intersection of said streets, and extending thence northwardly on Washington street, to a point equi-distant from Prince and Duke streets; thence westwardly parallel to said streets to a point equi-distant from Washington and St. Asaph streets; thence southwardly with a line parallel to Washington and St. Asaph streets to Duke street; thence westwardly with Duke street to the beginning, which said lot of ground was conveyed to the said Jonathan by deed dated the fourteenth day of August, eighteen hundred and eleven, by Mary Piercy, and is subject to the payment of an annual rent of fifty dollars to the assigns of William T. Alexander, also to an annual rent of two hundred dollars payable to the said Mary Piercy on the first day of November in every year during her natural life only. To have and to hold the premises hereby conveyed, and their appurtenances to the said Robert, his heirs and assigns, to his and their only proper use and behoof forever; in trust however for the following purposes and none other, that is to say, to permit the said Jonathan and his assigns to remain in possession and to receive the rents and profits of the premises, without account, until a sale shall become necessary under the terms of this deed; and if it shall at any time hereafter happen that any bond, bill or note heretofore endorsed, or hereafter to be endorsed by the said Andrew for the accommodation of the said Jonathan, or of Scholfield and Scott, or heretofore issued or hereafter to be issued by him, shall remain unpaid for the space of three days after it shall have become due, then the said Robert or his heirs shall, from time to time, on every such event, at the request of the said Andrew, his executors or administrators, on giving three weeks' notice by advertisment of the time and place of sale, proceed to sell the premises conveyed at public auction, on

such terms as the said Andrew or his representatives shall direct, or so much of the premises as shall be sufficient to satisfy and discharge as well the bond, bill or note so remaining unpaid, with interest thereon, as also all outstanding bonds, bills or notes endorsed or drawn aforesaid for the accommodation of the said Jonathan or Scholfield and Scott, although the same shall not be due, making the proper allowance for interest for the time such outstanding bonds, bills or notes shall have to run, and also shall sell so much of the demised premises in addition thereto as will satisfy all reasonable charges attending such sale; and the portions so sold, the said Robert shall convey to the purchaser or purchasers thereof; and shall, after defraying the charges of sale, discharge such bond or bonds, bill or bills, note or notes due and remaining unpaid as aforesaid, and also such other outstanding bonds, bills or notes as may not then be due, making the proper deduction for interest as aforesaid; and if any such bonds, bills or notes shall have been paid by the said Andrew or his representatives, then that the said Robert or his heirs shall, out of the money arising from such sale, refund the same to the said Andrew or his representatives with legal interest thereon, and if any balance arising from such sale shall remain, then that the said Robert, or his heirs, shall pay over the same to the said Jonathan, his heirs or assigns.

And the said Jonathan, for himself, his heirs, executors and administrators, does hereby covenant and agree to and with the said Andrew, and with the said Robert, his heirs and assigns, severally, as follows: that is to say, with the said Andrew that he will well and truly indemnify him harmless from all and every damage and loss in any manner to arise from his drawing or endorsing any bonds, bills or notes for the accommodation of the said Jonathan, or of Scholfield and Scott; and with the said Robert, that he, the said Jonathan, is now seised of a good, sure, perfect and absolute estate, in fee simple in the premises, free from any condition, limitation or incumbrance, to change, defeat or change the same, except the said annual rents before mentioned; and that he and his heirs will, at any time hereafter, execute and deliver all such other and further conveyances which may be necessary more completely to transfer the title to the premises to the said Robert, his heirs and assigns, according to the true intent and meaning hereof; and lastly, that he and his heirs will forever warrant and defend the premises to the said Robert, his heirs and assigns, against the claims and demands of all persons whatsoever. And the said Robert, on his part, covenants and agrees with the said Andrew, and with the said Jonathan, and their representatives severally, that he and his heirs will well and faithfully execute and carry into effect the several trusts herein created.

In testimony whereof, the parties hereto have set their hands and seals, this day and year first before mentioned.

JONA. SCHOLFIELD, [L. S.]
ELEANOR SCHOLFIELD, [L. S.]
ANDREW SCHOLFIELD, [L. S.]
R. I. TAYLOR. [L. S.]

Sealed and delivered in the presence of

THOS. K. BEALL,
HORATIO C. SCOTT,
ELIAS B. SMITH.

At a United Circuit Court of the District of Columbia, continued and held for the county of Alexandria, the sixth day of December, eighteen hundred and fourteen, this deed from Jonathan Scholfield and Eleanor, his wife, to Robert I. Taylor, in trust for Andrew Scholfield, was acknowledged by the parties to be their act and deed, which, together with a commission and return for the privy examination of Eleanor Scholfield, wife of the said Jonathan, are ordered to be recorded.

Test: G. DENEALE, *C. C.*

DISTRICT OF COLUMBIA, *County of Alexandria, sc.*

[L. S.] The United States of America to Abraham Faw, Richard Libby and Joseph Dean, gentlemen, Justices of the said County of Alexandria, greeting:

Whereas, Jonathan Scholfield and Eleanor, his wife, by their certain indenture of bargain and sale, bearing date the twenty-sixth day of June, eighteen hundred and fourteen, have sold and conveyed unto Robert I. Taylor, in trust, the fee simple estate of a lot of ground in the town of Alexandria, on the north side of Duke street, and east side of Washington, at the intersection of said streets, containing half an acre, with the appurtenances, situate, lying and being in the said County of Alexandria; and whereas the said Eleanor cannot conveniently travel to our United States Circuit Court of the District of Columbia, for the County of Alexandria, to make acknowledgment of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Eleanor shall be willing to make before you of the conveyance aforesaid, contained in the said indenture which is hereto annexed; and we do therefore desire you, or any two or more of you, personally to go to the said Eleanor and receive her acknowledgment of the same, and examine her privily and apart from the said Jonathan Scholfield, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing the